IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 422 OF 2003

IN

SUMMARY SUIT NO.1409 OF 2002

Bhansali Engineering Polymers .. Plaintiff

versus

Suryoday Plastic Ltd. .. Defendant

...

Mr.S.R. Saudagar for the plaintiff.

Mr.V.A. Rathi for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 21st March 2005.

P.C.:

1. This Summons for Judgement is taken out by the plaintiff in a suit for recovery of the price of the goods sold supplied and delivered to the defendant.

2. The plaintiff sold and supplied to the defendant goods as per the Invoice dated 22nd August 1999. A copy of the invoice is annexed at Exhibit-B to the plaint. Inspite of the plaintiffs demands,

the defendant failed and neglected to make the payment. By letter dated 2nd June 2000, the defendant informed the plaintiff that the promoter of the defendant Company were divesting and new promoters were taking over the company and that after the said process was over, sufficient funds wound be inducted in the defendant's operation which would take care of the old dues. The defendant therefore, requested the plaintiff to bear with the plaintiff for some time. However, the defendant failed and neglected to make the payment. The plaintiff therefore, by its Advocates notice dated 11nd February 2002 demanded payment. However, the defendant failed and neglected to do so. Hence, the plaintiff has field this suit for recovery of the dues.

3. The learned counsel for the defendant raised three defences. A Regular Civil Suit no.231 of 2003 has been filed by the plaintiff in the High Court of Judicature at Madras for recovery of the price of goods other than the suit goods. Since the plaintiff had filed a regular suit in respect of the other supplies, the plaintiff ought to have filed this suit also as an ordinary suit and not as a summary suit.

Mere fact that the plaintiff has chosen to file a regular suit and not a summary suit in respect of some other supplies, is no ground for granting unconditional leave to the defendant. If the plaintiff is otherwise entitled to file this suit as a summary suit he cannot be precluded from filing a summary suit only because he has filed regular suit in respect of other supplies which are not connected with the suit supplies. It was not contended that this suit is otherwise not maintainable as a summary suit.

4. Learned counsel next submits that this court had no jurisdiction to try and entertain and suit because the defendant has an offence at Tamil Nadu and the goods were supplied in Tamil Nadu. In paragraph no.2 of the plaint, the plaintiff has specifically averred that the order was placed by the defendant at Mumbai and therefore part of the cause of action has arisen at Mumbai. This fact is not specifically denied in the affidavit in reply. The plaintiff has obtained a leave under clause XII of the Letters Patent. In view of this, it cannot be said that this Court has no jurisdiction to entertain and try the suit.

5. Learned counsel for the defendant lastly submits that there is no agreement to pay interest. The plaintiff, through its counsel, gives up the claim of interest prior to the date of the suit. In view of this, there is no bar for trying the suit as a summary suit and there is no defence of substance available with the defendant regarding the principal claim. Hence, the defendant can only be granted conditional leave to defend the suit subject to his depositing in the Court the principal sum. Hence, I pass the following order:

6. The defendant is granted conditional to defend the suit subject to its depositing in the Court the principal sum of Rs.6,89,640/- within a period of eight weeks. On such deposit, the plaintiff is permitted to withdraw the same by furnishing the bank guarantee or other security to the satisfaction of Prothonotary and Registrar (O.S.).

7. On deposit of the money, the suit shall stand transferred to the list of commercial causes. The defendant to file written statement within a period of ten weeks from today.

D.G. KARNIK, J